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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1407

JAMES TRAINOR, et al.,

Appellants,

vs.

JUAN HERNANDEZ, et al.,

Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

BRIEF AND ARGUMENT OF APPELLANTS JAMES TRAINOR AND VIVIAN O'MALLEY

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OPINION BELOW

The opinion of the district court (A. 68-77) is reported at 405 F. Supp. 757.

JURISDICTION

Appellees brought this class action under 28 U.S.C. § 1343 (3) and (4) and 42 U.S.C. § 1983, seeking to have the district court declare invalid and enjoin the enforcement of

the Illinois Attachment Act, on the ground that the procedures provided for by that Act deprived appellees of their property without due process of law in violation of the fourteenth amendment to the United States Constitution. A three-judge court, convened pursuant to 28 U.S.C. §§ 2281 and 2284, entered its judgment on December 15, 1975, granting appellees the relief sought.

Appellants filed their notice of appeal in the district court within the 60-day period provided for by 28 U.S.C. § 2101(b), on February 3, 1976 (A. 79), and filed their jurisdictional statement on April 3, 1976. This Court noted probable jurisdiction on June 7, 1976. Jurisdiction of the Supreme Court of the United States to review this case by direct appeal is conferred by 28 U.S.C. § 1253.

STATUTE INVOLVED

The Illinois Attachment Act, Illinois Revised Statutes, Chapter 11 is reprinted in the Appendix (A. 28-49).

QUESTIONS PRESENTED

1. Whether the principles of *Younger* v. *Harris*, 401 U.S. 37 (1971), and *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975), apply to the present case, where appellees sought to have the federal district court enjoin appellants—state officials—from prosecuting a pending attachment proceeding against appellees in the Illinois courts.

2. Whether the procedures provided for by the Illinois Attachment Act, Illinois Revised Statutes 1973, Chapter 11, afford appellees—attachment debtors—due process of law.

STATEMENT OF THE CASE

Appellees Juan and Maria Hernandez brought this class action in the district court challenging the constitutionality of the Illinois Attachment Act (A. 28-49) after the State of Illinois, on the relation of the Illinois Department of Public Aid, instituted attachment proceedings against them in the Illinois courts. The Department filed its state suit to attach monies on deposit in appellees' credit union accounts on the ground that appellees applied for and received public assistance while fraudulently concealing the existence of those accounts.

The Illinois Attachment Act provides that a creditor having a money claim may attach the property of his debtor on any one of nine narrow grounds, all of which focus on circumstances which give a creditor cause for insecurity, either because of fraudulent conduct on the part of the debtor or the debtor's absence from the State (§1) (A. 28-29). A creditor is entitled to a writ of attachment if he files with the clerk of the court an affidavit setting forth the nature and amount of the claim and one of the nine circumstances set forth in section one (§2) (A. 29-30). In cases sounding in tort the creditor is required to be examined under oath by a judge concerning the cause of action (§2) (A. 29-30). Except where an agency of the State is involved, the creditor is required to furnish a bond in double the amount of the claim or double the amount of the property to be attached (§§ 4a, 4b) (A. 31-32).

Upon filing of a proper affidavit and the posting of bond, the clerk issues a writ of attachment directed to the sher-

iff, who executes the writ and also serves it upon the debtor (§§ 6, 8, 10) (A. 33-36). The writ is returnable and the debtor must appear or answer on a date set by the creditor, which date shall not be less than ten nor more than sixty days from the date of the writ (§§ 6, 25) (A. 33, 43). The creditor must file his complaint ten days before the return day, and if he does not do so within five days after the return date, the suit is subject to dismissal (§25) (A. 43). The debtor may at his option contest the attachment by a motion to quash, answer the creditor's claim on the merits (§27) (A. 44), or file any other paper appropriate to a civil proceeding (§26) (A. 43), such as a motion to dismiss. The burden of proof of establishing the propriety of the attachment and the underlying claim is upon the creditor. If the attachment is found to be wrongful, the debtor may recover damages and costs (§§ 4a, 27) (A. 31, 44).

The debtor also has the right to retain or recover possession of the property in question by posting a bond in double the value of the property or in the amount of the debt (§§ 14, 15) (A. 38). In absence of this bond, the sheriff retains custody of the attached property (§ 14) (A. 38) until the debtor successfully attacks the attachment or the underlying claim is adjudicated. In the case of garnishment, the garnishee must withhold the property from the debtor (§ 21) (A. 41).

The Illinois Department of Public Aid brought its attachment suit on October 30, 1974, pursuant to section 11-21 of the Illinois Public Aid Code (A. 26), which authorizes the Department to bring a civil and/or criminal action against any aid recipient who has concealed facts which

would affect his eligibility for financial aid. The Department filed both the required affidavit and its complaint, which alleged that appellees had fraudulently concealed the existence of monies in their credit union accounts, and that as a result, the Department had provided public assistance in the amount of $3,720.00, for which they were not eligible (A. 14-20).

The writ of attachment (A. 21-23) was thereupon issued and executed against the accounts on November 5, 1974. Appellees were served with the writ, complaint, and affidavit on November 8, 1974. They appeared on the return date, which had been set for November 18, 1974, but were informed that the matter had been continued until December 19, 1974 (A. 9-10).

Appellees then brought the present action in the district court on December 2, 1974, on behalf of themselves and all others "who have had or may have their property attached without notice or hearing upon a creditor's mere allegation of fraudulent conduct pursuant to the Illinois Attachment Act" (A. 6-7), attacking the validity of the Illinois Act and asking for injunctive relief. They asserted that the Illinois Act violates the due process clause in that it authorizes creditors to attach the assets of debtors upon allegations of fraudulent conduct (§1, parts sixth through ninth (A. 28-29)) without judicial review and without prior notice or an opportunity to be heard (A. 10-11). Appellees prayed that the Clerk of the Circuit Court of Cook County, as an individual defendant, and all other clerks for the judicial circuits of Illinois, as class defendants, be enjoined from issuing such writs; that the Sheriff of Cook County, as an individual defendant, and all other county sheriffs in Illinois, as class defendants, be enjoined from executing

such writs; and that appellants Trainor and O'Malley, as agents of the Illinois Department of Public Aid, be enjoined from applying for such writs and from refusing to dismiss the writ of attachment against the appellees' property (A. 12-13).

The appellees also moved for a temporary restraining order requiring appellants to dismiss the writ of attachment and requiring defendant Elrod, as sheriff, to release control of their property (A. 24). In an affidavit in support of this request, appellee Juan Hernandez stated that he needed the money in his credit union account to pay his rent, utility bills, and an automobile repair bill, and to support his family while he went into the hospital for surgery on his back (A. 24-25). Appellants filed a memorandum in opposition to appellees' motion for a temporary restraining order, with supporting affidavits. The affidavits revealed that appellee Juan Hernandez had hospitalization benefits, including sick pay, provided by his employer (A. 50); that appellees had a combined income of more than $15,000 in the first 11 months of 1974 (A. 51); and that appellees had a combined balance of more than $1,600 in their credit union accounts. In their memorandum, appellants also stated that appellees had a total income of more than $10,000 (R. Item 5, p. 12), during the period in which they collected $4,123.76 in public aid benefits (A. 53). The appellees' request for temporary relief was not ruled on because the court persuaded the parties to come to an agreement whereby appellants agreed to release one-half of the attached funds.

A three-judge court was designated pursuant to 28 U.S.C., §2284, on March 21, 1975 (A. 61). The parties filed memoranda on the due process issue after appellants filed

a motion to dismiss (A. 55-56) and appellees cross-filed for summary judgment (A. 57). The district court then directed that additional memoranda be filed in light of this Court's decision in *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975) (A. 62). The district court certified this suit as both a plaintiff and defendant class action on October 31, 1975 (A. 63-64).

The district court entered its judgment and opinion on December 15, 1975, granting appellees the relief they had requested (A. 65-77). The court held that *Huffman* v. *Pursue, Ltd.* was inapplicable, because that case was limited to civil proceedings "in aid of and closely related to criminal statutes" (A. 71-72). The court stated:

> In *Huffman,* the State of Ohio proceeded under a statute which gave an exclusive right of action to the state. By contrast, the Illinois Attachment Act provides a cause of action for any person, public or private. It is mere happenstance that the State of Illinois was the petitioner in this attachment proceeding. It is likewise coincidental that the pending state proceedings may arguably be quasi-criminal in nature; under the Illinois Attachment Act, they need not be. These major distinctions preclude this Court from extending the principles of *Younger,* based on considerations of equity, comity and federalism, beyond the quasi-criminal situation set forth in *Huffman* (A. 72).

The court also held that the case fell within one of the express exceptions to *Younger* v. *Harris,* since in the court's view, the Illinois Attachment Act was "patently and flagrantly violative of the constitution" (A. 72).

The court found the Illinois Act (§§ 1, 2, 2a, 6, 8, 10 and 14) unconstitutional because, according to the court, it neither provided for a pre-seizure hearing nor the alter-

native safeguards approved by this Court in *Mitchell* v. *W. T. Grant Co.*, 416 U.S. 600 (1974) (A. 76-77).

The appellants filed a motion for a stay of injunction pending appeal, which the court denied on February 25, 1976, the Honorable Wilbur F. Pell, Jr., United States Circuit Court Judge, dissenting (A. 81).

SUMMARY OF ARGUMENT

I.

The principles of *Younger* v. *Harris* and *Huffman* v. *Pursue, Ltd.* are fully applicable to this case, where appellees brought suit in the federal district court to enjoin a pending attachment proceeding which the Illinois Department of Public Aid instituted against them in the Illinois courts. The district court, thus, should have deferred to the state court and dismissed this case.

The rule that a federal court should not intervene in state criminal prosecutions, except in extraordinary circumstances, is traditional doctrine that this Court clarified in *Younger*. Considerations of equity, comity, and federalism underlie this rule.

Equity counsels that in any suit for injunctive relief a plaintiff must establish that he has no adequate remedy at law, and that absent equitable relief, he will suffer irreparable harm. When a plaintiff seeks to enjoin state court proceedings, the principles of comity and federalism,

which command respect for state functions and which are at the heart of our federal system, come into play. It has traditionally been held in such circumstances that the plaintiff must then establish irreparable harm which is both "great and immediate," which the *Younger* case translated into the extraordinary circumstances requirement. An injunction directed against a state court proceeding is very costly to federal interests, and thus, is only issued in extraordinary circumstances where the state court processes are inadequate to protect the plaintiff. Only in such circumstances should the federal courts assert themselves as the ultimate *guarantor* of federal rights.

There is no question that considerations of equity, comity, and federalism are relevant, regardless of whether the federal suit is to enjoin state criminal or civil proceedings. Prior decisions of this Court, however, have only concerned injunctions against state criminal prosecutions or against proceedings where the State was seeking to enforce a statute with quasi-criminal elements. The district court interpreted this fact as a limitation on the rule of *Younger* and *Huffman*, and thus, enjoined the state proceeding involved in this case.

This supposed limitation of *Younger* and *Huffman* rests on the notion that unless state criminal or quasi-criminal interests are involved, the State's interest is not substantial enough to offend our federal system when federal rights are asserted. The substantiality of the State's interest, however, depends on the state policy involved, and not on the labels "criminal" and "civil." The State's interest is substantial whenever the state courts are called upon to enforce or interpret the State's own substantive rules, and federal court intervention in such circumstances will in

every case be an affront to state legislative and judicial functions. The district court's injunction against a state agency in this case was an embarrassment to executive functions as well. Moreover, one of the state substantive policies involved here—that of the prevention of welfare fraud—is of the utmost importance and provides the quasi-criminal element to which the district court attached such significance.

The district court also found *Younger* and *Huffman* inapplicable because in its view, the Illinois Attachment Act is "patently and flagrantly violative of the constitution." The court, however, misapprehended the nature of this exception to the *Younger* rule. This case does not present an extraordinary circumstance necessary to vitiate the *Younger* rule. This is evident from the fact that appellees could have eliminated the supposed threat to their due process rights by their defense of the state attachment case. The district court applied a "facial invalidity" standard to the Illinois Act, which is insufficient to invoke an exception to the rule of *Younger*.

Appellees' due process rights could have been vindicated quickly and effectively in the state attachment proceeding which gave rise to this case, without embarrassment to the federal system. The district court clearly misapprehended its role as the *guarantor* of federal rights, and for these reasons, its judgment should be vacated.

II.

In *Mitchell* v. *W. T. Grant Co.* this Court set out the due process standards to be applied to statutes providing for the seizure of a debtor's property. Due process requires only that the State strike a proper balance between creditor and debtor interests. The creditor's interest in preserving property subject to attachment against possible waste or destruction, and the risk of wrongful alienation or concealment if a debtor is forewarned of the attachment are sufficient to justify summary attachments on a creditor's own sworn ex parte application, provided there are procedural safeguards which minimize risk against wrongful seizure.

The safeguards against wrongful attachment provided for by the Illinois Attachment Act parallel those sustained in *Mitchell* in all essential respects. Before a writ of attachment will issue under the Illinois Act, a creditor must file an affidavit setting forth the nature of his claim and its amount, diminished by set-offs and credits, and one of nine narrow circumstances in which an attachment will issue. The facts which give rise to his claim must be set forth specifically under Illinois decisional law, and must be of the affiant's own personal knowledge. If his claim sounds in tort, rather than contract, the creditor must appear before a judge to be examined on his claim. The nine circumstances under which attachment will issue under the Act are narrowly drawn, so that attachment is available only when the creditor will have especially grave concern for his ability to collect on his claim, absent attachment. In this respect the Illinois Act is considerably narrower than the statute in *Mitchell*. The creditor is required to post bond and is liable to the debtor for wrongful attachment. The

debtor's interest is further safeguarded by the fact that the sheriff retains possession of the attached property, whereas in *Mitchell* the creditor was entitled to possession. A debtor may recover his property by posting bond. Finally, the debtor is entitled to an early hearing within sixty days, and may well be able to advance the date of his hearing by proper motion. Thus, under the Illinois Act, the danger of wrongful attachment and the seriousness of the deprivation of the debtor's property have been substantially minimized, and the attachment is allowed only when the risks to a creditor's security are especially serious.

Moreover, there are additional reasons to uphold the application of the Illinois Act to the facts of this case. The prevention of welfare fraud is an important governmental interest, which apart from the other more general considerations outlined above, justifies the summary attachment of the property of the person who has committed the fraud.

ARGUMENT

I.

THE PRINCIPLES OF YOUNGER v. HARRIS AND HUFFMAN v. PURSUE, LTD. REQUIRE THAT THIS SUIT BE DISMISSED.

The same considerations which governed this Court's disposition of *Younger* v. *Harris*, 401 U.S. 37, 27 L.Ed.2d 669, 91 S.Ct. 746 (1971), and *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 43 L.Ed.2d 482, 95 S.Ct. 1200 (1975), are fully applicable here, and dictate that the district court should have dismissed the instant case. Instead of deferring to the Illinois courts which are surely competent to rule on the due process issue presented by the pending state attachment proceeding which gave rise to this case, the district court went to the merits of appellees' constitutional challenge, striking down the Illinois Attachment Act and enjoining appellants—state officials—from proceeding under that Act.

In *Younger* this Court held that absent certain extraordinary circumstances, considerations of equity, comity, and federalism preclude the federal courts from enjoining pending state criminal prosecutions. In *Huffman* the Court made it clear that this doctrine applies in the civil arena as well, at least where the "State is a party to the [pending] proceeding, and the proceeding is both in aid of and closely related to criminal statutes." 420 U.S. at 604, 43 L.Ed.2d at 492. Notwithstanding the facts that the State was the plaintiff in the pending attachment suit involved here and that the State was proceeding in aid of a statute which gave it the option of pursuing criminal and/or civil remedies in cases of welfare fraud, Ill. Rev. Stat. 1973, ch.

23, §11-21, the district court held *Huffman* inapplicable. The basis of the court's holding was that the Illinois Attachment Act provides a civil action available to anyone—public or private—while the statute in *Huffman* "gave an exclusive right of action to the State" and was itself quasi-criminal in nature. The court found it "mere happenstance that the State of Illinois was the petitioner in the attachment proceeding," and "coincidental that the pending state proceeding may arguably be quasi-criminal in nature." (A. 71-72).

It is the State's position that the principles enunciated in *Younger* and *Huffman* are applicable to pending state civil proceedings generally, and to the present case particularly. An examination of the considerations which mandated this Court's holdings in *Younger* and *Huffman* demonstrates that the rule against federal intervention invoked in those cases is applicable to all cases where a federal court is called upon to enjoin state court proceedings, and clearly shows the inappropriateness of the district court's action in this case.

As this Court pointed out in *Huffman*, 420 U.S. at 599-600, 43 L. Ed. 2d at 489-90, the decision in *Younger* was not a novel one, but was a reaffirmation of the Court's holdings in a long line of cases typified by *Fenner* v. *Boykin*, 271 U.S. 240, 70 L. Ed. 2d 927, 46 S. Ct. 492 (1926).[1] Relying on these cases, the Court in *Younger* stated:

[1] These cases, as identified by the Court in *Huffman*, 420 U.S. at 600, 43 L.Ed.2d at 490, are: *Spielman Motor Sales Co.* v. *Dodge*, 295 U.S. 89, 79 L.Ed. 1322, 55 S.Ct. 678 (1935); *Beal* v. *Missouri Pacific R.R. Co.*, 312 U.S. 45, 85 L.Ed. 577, 61 S.Ct. 418 (1941); *Watson* v. *Buck*, 313 U.S. 387, 85 L.Ed 1416, 61 S.Ct. 962, 136 A.L.R. 1426 (1941); *Williams* v. *Miller*, 317 U.S. 599, 87 L.Ed 489, 63 S.Ct. 258 (1942); *Douglas* v. *City of Jeannette*, 319 U.S. 157, 87 L.Ed. 1324, 63 S.Ct. 877 (1943).

> This brief discussion should be enough to suggest some of the reasons why it has been perfectly natural for our cases to repeat time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions.

401 U.S. at 45, 27 L. Ed. 2d at 676. Federal interference is justified only "under extraordinary circumstances where the danger of irreparable loss is both great and immediate". *Huffman*, 420 U.S. at 600, 43 L. Ed. 2d at 490, citing *Fenner* v. *Boykin*, 271 U.S. at 243, 70 L. Ed. at 927; *Younger*, 401 U.S. at 45, 27 L. Ed. at 676.

The most basic source of this rule lies in the requirements for pleading any cause of action in equity. *Douglas* v. *City of Jeannette*, 319 U.S. 157, 162, 87 L. Ed. 1324, 1328, 63 S. Ct. 877 (1943). The plaintiff must establish that he has no adequate remedy at law, *Huffman*, 420 U.S. at 600-01, 43 L. Ed. 2d at 490, citing *Younger*, 401 U.S. at 43, 27 L. Ed. 2d at 675, and that he will suffer irreparable harm in the absence of equitable relief, *Huffman*, 420 U.S. at 601, 43 L. Ed. 2d at 490-91, citing *Younger*, 401 U.S. at 46, 27 L. Ed. 2d at 676. The especially stringent requirement that equitable relief will still not be available except in extraordinary circumstances arises in the context of a suit to enjoin state court proceedings. This requirement of extraordinary circumstances is directly traceable to and is dictated by the principles of comity and federalism. *Younger*, 401 U.S. at 46, 27 L. Ed. 2d at 676; *Lynch* v. *Snepp*, 472 F. 2d 769, 772 (4th Cir. 1973), *cert. denied*, 415 U.S. 983, 39 L. Ed. 2d 880, 94 S. Ct. 1576 (1974); see *Douglas* v. *City of Jeannette*, 319 U.S. at 162-63, 87 L. Ed. 2d at 1329; *Fenner* v. *Boykin*, 271 U.S. at 243-44, 70 L. Ed. at 927.

While some of the cases cited above also found support in the maxim that courts of equity do not ordinarily en-

join criminal prosecutions, *e.g., Douglas* v. *City of Jeannette,* 319 U.S. at 163, 87 L. Ed. at 1329, it is clear that this maxim was not necessary to the reasoning or the holdings of those cases. The requirement of irreparable harm arises in any suit for an injunction, and the requirement of extraordinary circumstances arises out of a regard for state functions. This was clearly recognized in *Huffman,* where this Court stated:

> The seriousness of federal judicial interference with state civil functions has long been recognized by this Court. We have consistently required that when federal courts are confronted with requests for such relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence. For example, *Massachusetts State Grange* v. *Benton,* 272 U.S. 525, 71 L. Ed. 387, 47 S. Ct. 189 (1926), involved an effort to enjoin the operation of a state daylight savings act. Writing for the Court, Mr. Justice Holmes cited *Fenner* v. *Boykin, supra,* and emphasized a rule that "should be very strictly observed," 272 U.S., at 529, 71 L. Ed. 387, "that no injunction ought to issue against officers of a State clothed with authority to enforce the law in question, unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury." *Id.,* at 527, 71 L. Ed. 387.

420 U.S. at 603, 43 L. Ed. 2d at 492.

The great degree of deference to state functions which the above cases require is fundamental to our federal form of government. The notions of federalism and comity[2] which

[2] While it is recognized that "comity" and "federalism" may be defined separately, the concepts overlap to such an extent that any attempt to do so comprehensively is unnecessary here. It would seem that comity is a more general concept since it en-

(footnote continued on following page)

this Court termed as the most vital to its decisions in *Younger* and *Huffman* are

> a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as "Our Federalism," and one familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism." The concept does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, "Our Federalism," born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future.

Younger, 401 U.S. at 44, 27 L. Ed. 2d at 675; *accord, Huffman,* 420 U.S. at 601, 43 L. Ed. 2d at 490.

compasses the deference or respect which any jurisdiction accords to the law of another. Federalism would seem to be the institutionalization of comity into our government via the Constitution. It additionally connotes the function of our federal government as the ultimate guarantor of federal rights.

In *Atlantic Coast Line Railroad Co.* v. *Brotherhood of Locomotive Engineers,* 398 U.S. 281, 26 L. Ed. 2d 234, 90 S. Ct. 1739 (1970), this Court outlined the constitutional and Congressional foundation for federal deference to state court proceedings, as follows:

> When this Nation was established by the Constitution, each State surrendered only a part of its sovereign power to the national government. But those powers that were not surrendered were retained by the States and unless a State was restrained by "the supreme Law of the Land" as expressed in the Constitution, laws, or treaties of the United States, it was free to exercise those retained powers as it saw fit. One of the reserved powers was the maintenance of state judicial systems for the decision of legal controversies. . . .
>
> While the lower federal courts were given certain powers in the [Judiciary Act of 1789], they were not given any power to review directly cases from state courts, and they have not been given such powers since that time. Only the Supreme Court was authorized to review on direct appeal the decisions of state courts. Thus from the beginning we have had in this country two essentially separate legal systems. Each system proceeds independently of the other with ultimate review in this Court of the federal questions raised in either system. Understandably this dual court system was bound to lead to conflicts and frictions. Litigants who foresaw the possibility of more favorable treatment in one or the other system would predictably hasten to invoke the powers of whichever court it was believed would present the best chance of success. Obviously this dual system could not function if state and federal courts were free to fight each other for control of a particular case. Thus, in order to make the dual system work and "to prevent needless friction between state and federal courts," *Oklahoma Packing Co.* v. *Gas Co.,* 309 U.S. 4, 9, 84 L. Ed. 537, 540, 60 S. Ct. 215 (1940), it was necessary to work out lines of demarcation between the two systems. Some of these limits were spelled out in the 1789 Act. Others have been added by later statutes as well as judicial decisions.

398 U.S. at 285-86, 26 L. Ed. 2d at 240-41.

The Court went on to state:

> Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court.

398 U.S. at 287, 26 L. Ed. 2d at 241. See 28 U.S.C. §1257.

The specific ways in which federal intervention in state court proceedings violates principles of comity and federalism have been identified many times. Such intervention results in duplicative legal proceedings, which runs directly contrary to the present day need for judicial efficiency. *Steffel* v. *Thompson,* 415 U.S. 452, 462, 39 L.Ed. 2d 505, 516, 94 S.Ct. 1209 (1974); *Lynch* v. *Snepp,* 472 F. 2d at 774. It reflects negatively on the state court's ability and good faith in enforcing constitutional rights. *Huffman,* 420 U.S. at 604, 43 L.Ed.2d at 492; *Lynch* v. *Snepp,* 472 F.2d at 774. In this regard, the *Huffman* Court expressly refused to assume that state courts would fail to execute their constitutional responsibilities. 420 U.S. at 611, 43 L.Ed.2d at 496; *accord, Cousins* v. *Wigoda,* 463 F. 2d 603 at 607, 608 (7th Cir. 1972), *application for a stay denied,* 409 U.S. 1201, 34 L.Ed.2d 15, 92 S.Ct. 2610 (1972). Most importantly, federal intervention prevents the State from effectuating its substantive policies and continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections to those

policies. *Huffman,* 420 U.S. at 604, 43 L.Ed.2d at 492. The cutting short of the state proceeding is especially serious in this context where the statute involved is capable of judicial narrowing in light of constitutional principles, as is the statute involved in this case. *Huffman,* 420 U.S. at 609, 43 L.Ed.2d at 495.

It should be apparent that the above considerations are fully applicable to this case. Appellees had the opportunity in the state court to assert the same constitutional objections which they presented to the federal district court, by filing a motion to quash or a motion to dismiss, which would have come on for hearing no later than December 19, 1974—nearly a full year before the decision in this case. Such a course would have avoided dual proceedings and would most certainly have saved the court as well as the parties a great deal of time. This is especially so in view of the fact that a three-judge court had to be convened. The State would also have been given the opportunity to rule on its own substantive policies in light of this Court's recent due process decisions dealing with summary seizures of property. Notwithstanding the fact that the district court held the Illinois Act to be "patently and flagrantly violative of the constitution," there is ample room for judicial construction within the Act to bring it within this Court's holding in *Mitchell* v. *W. T. Grant Co.,* 416 U.S. 600, 40 L.Ed.2d 406, 94 S.Ct. 1895 (1974).

The district court found the principles of *Younger* and *Huffman* to be inapplicable in the present case, since in that court's view, the rule of those cases was limited to criminal proceedings or proceedings "in aid of and closely related to criminal statutes." This supposed bar to the applicability of *Younger* and *Huffman* to civil proceedings apparently rests on the State's paramount interest in

defining crimes, and the additional protections afforded defendants in a criminal prosecution. *Huffman,* 420 U.S. at 614, 615, 43 L.Ed.2d at 498, 499, dissenting opinion. According to this view, the federal court's role as the ultimate guarantor of federal rights is outweighed by principles of equity, comity, and federalism only when the State's interest in the proceeding is especially important and the defendant has procedural guarantees beyond those which attach to civil proceedings. The latter reason has been wholly undercut by *Huffman* where only civil procedural guarantees were involved. Furthermore, while civil proceedings offer fewer procedural guarantees, the federal interest in such proceedings is correspondingly diminished by the fact that the potential impact on federal rights is lessened where criminal sanctions are not involved. As to the supposition that the State's interest is paramount or substantial only when criminal prosecutions are involved, it is more likely the case that the substantiality of the State's interest depends on the specific policy involved rather than on the labels "criminal" or "civil". *Anonymous* v. *Association of the Bar of the City of New York,* 515 F. 2d 427, 432 (2d Cir. 1975), *cert. denied* 423 U.S. 863, 46 L. Ed.2d 92, 96 S.Ct. 122 (1975); *Lynch* v. *Snepp,* 472 F.2d at 773; *Duke* v. *Texas,* 477 F.2d 244, 248 (5th Cir. 1973), *cert. denied,* 415 U.S. 978, 39 L. Ed. 2d 874, 94 S.Ct. 1565 (1974); *Cousins* v. *Wigoda,* 463 F.2d at 606; *Palaio* v. *McAuliffe,* 466 F.2d 1230, 1232-33 (5th Cir. 1972); *Fisher* v. *Federal National Mortgage Ass'n,* 360 F.Supp. 207, 210 (D. Md. 1973). It would surely seem that any policy which the State feels is important enough to codify is sufficient to invoke the principles of comity and federalism. But even assuming that principles of *Younger* and *Huffman* are not applicable to civil proceedings generally, they should certain-

ly be applied in the present case where the State was a party to the proceeding and the strong state policy of combatting welfare fraud was involved.

The district court was able to avoid the *Huffman* doctrine only by focusing in on its supposed limited applicability to civil cases which are quasi-criminal, and then applying the supposed limitation to a case which might have been brought under the Illinois Act. Because of the nature of the considerations which gave rise to *Younger* and *Huffman,* however, it would seem that the limitation of *Huffman,* if valid at all, should be applied only to the specific proceeding before the court. In other words, the principles of *Younger* and *Huffman* apply to the instant case because the State is a party and the state civil proceeding involved is in aid of a criminal statute. Considerations of equity, comity, and federalism are no less applicable to the present case merely because a private party could have brought a strictly civil action under the Illinois Act.

The extraordinary circumstances in which *Younger* and *Huffman* do not apply (and which help preserve the federal court's function as the ultimate guarantor of federally secured rights) are not present in this case. There is absolutely no indication of bad faith or harassment in this suit. Nor is there any indication of irreparable injury, much less irreparable injury which is "great and immediate." The appellees had an income of approximately $15,000 in the ten months preceding the attachment of the funds in their credit union account (A. 51). They also had adequate and speedy remedies available to them in the state court to defeat the attachment. The district court made no finding of irreparable injury, and in view of the above circumstances, for this reason alone the district court should have dismissed this case.

The district court did hold that the Illinois Act was "patently and flagrantly violative of the constitution." It is apparent, however, the court misconstrued the nature of this exception to *Huffman.* The extraordinary circumstances in which considerations of equity, comity, and federalism yield to the federal court's interest in guaranteeing federal rights rest on a determination that the state court processes are wholly inadequate to protect a party's federal right, or that the very bringing of the state suit results in the necessary injury. *Younger,* 401 U.S. at 56, 27 L.Ed.2d at 682, concurring opinion; *Lynch* v. *Snepp,* 472 F. 2d at 775. Where the threat to federally protected rights can be erased by the defense of a single prosecution, the injury asserted by a plaintiff is not irreparable. *Younger,* 401 U.S. at 46, 27 L.Ed.2d at 677. Furthermore, it is clear from the district court's opinion that the district court applied an unconstitutional "on its face" standard, which is insufficient to overcome the rule of *Younger* and *Huffman. Younger,* 401 U.S. at 53, 27 L.Ed.2d at 681. The proper standard is "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." *Huffman,* 420 U.S. at 611, 43 L.Ed.2d at 496. Assuming *arguendo,* that the application of the Illinois Act here violates appellees' due process rights,[3] it is not difficult to imagine situations and constructions of the Illinois Act which would pass

[3] In light of Argument II, *infra,* which demonstrates the close similarities between the Illinois Act and the sequestration statute which this Court upheld in *Mitchell* v. *W. T. Grant Co.,* 416 U.S. 600 (1974), it is impossible to see how the district court reached the conclusion that the Act was patently and flagrantly unconstitutional.

constitutional muster, especially where the underlying debt sounds in tort and a pre-attachment appearance before a judge is, therefore, required. Moreover, the Act applies to actions already commenced, where the debtor is before the court and has had an opportunity to answer the creditor's complaint. In such circumstances, appellees' due process objections would be totally inapplicable.

There is very little to support the district court's injunction in this case. Appellees' due process rights could have been vindicated more expeditiously and as effectively in the state court, with no embarrassment to the federal system. It is at least questionable whether appellees even stated an equitable cause of action, must less one so compelling that it was necessary to interfere with state court proceedings. And without in any way minimizing the importance of federal due process rights, it should be noted that these rights rarely call into play the strict scrutiny of the federal courts, as is the case with first amendment rights, for instance. The district court went far beyond its function as an ultimate *guarantor* of federal rights, and should have dismissed this suit.

II.

THE PROCEDURES PROVIDED FOR BY THE ILLINOIS ATTACHMENT ACT COMPORT WITH PRINCIPLES OF DUE PROCESS OF LAW.

Assuming *arguendo,* that the Court finds that the principles of *Younger* and *Huffman* should not be applied in this case, the district court's judgment should be reversed because the provisions of the Illinois Attachment Act afford appellees due process of law. The procedures in question here closely parallel those upheld by this Court in

Mitchell v. *W. T. Grant Co.,* 416 U.S. 600, 40 L.Ed.2d 406, 94 S.Ct. 1895 (1974). The district court's decision, however, effectively restricted the holding of *Mitchell* to the facts of that case. The court characterized *Mitchell* as "an exception to the pre-seizure hearing rule promulgated in *Sniadach* and *Fuentes*" (A. 73), rather than regarding it as setting forth the proper approach to be followed in resolving due process issues. Specifically, the district court did not apply the traditional due process balancing of interests test to the facts of this case, as is required by the *Mitchell* decision.

In *Mitchell* this Court upheld a Louisiana statute which provides for sequestration of property where "one claims the ownership or right to possession of property . . . if it is within the power of the defendant to conceal, dispose of, or waste the property or the revenues therefrom, or remove the property from the parish, during the pendency of the action." Under the statute a writ of sequestration issues "only when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts." The creditor is required to make this showing before a judge. He may do so, however, on ex parte application, without notice to the debtor or an opportunity for the debtor to be heard. The debtor is entitled to seek immediate dissolution of the writ, which must be ordered, unless the creditor "proves the grounds upon which the writ was issued." 416 U.S. at 605-06, 40 L.Ed.2d at 412-13.

The creditor in *Mitchell* filed suit alleging default in payment on an installment sales contract and requested that the property over which it had a vendor's lien be sequestered. The creditor asserted that it had reason to believe that the debtor would "encumber, alienate or otherwise dispose of

the merchandise described in the foregoing petition during the pendency of these proceedings, and that a writ of sequestration is necessary in the premises." Based on the creditor's petition and affidavit, a Louisiana state court ordered, without prior notice or an opportunity for the debtor to be heard, that the property be sequestered. The property was seized on February 7, 1972, and on March 3rd, the debtor attacked the sequestration as violative of his due process rights. The court upheld the sequestration on March 16th, which decision was affirmed by the Supreme Court of Louisiana. 416 U.S. at 601-03, 40 L.Ed.2d at 410-11.

In upholding the Louisiana statute, this Court weighed all of the competing interests involved, making it clear that the State is entitled to recognize the interests of both the creditor and the debtor and to afford the creditor meaningful protection. 416 U.S. at 608, 40 L.Ed.2d at 414. In marked contrast to the approach followed by the district court in the present case, this Court in *Mitchell* specifically disavowed any notion of fixed requirements of procedural due process:

> The requirements of due process of law "are not technical, nor is any particular form of procedure necessary." *Inland Empire Council* v. *Millis,* 325 U.S. 697, 710, 89 L. Ed. 1877, 65 S. Ct. 1316 (1945). Due process of law guarantees "no particular form of procedure; it protects substantial rights." *NLRB* v. *Mackay Co.,* 304 U.S. 333, 351, 82 L. Ed. 1381, 58 S. Ct. 904 (1938). "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 895, 6 L. Ed. 2d 1230, 81 S. Ct. 1743 (1961); *Stanley* v. *Illinois,* 405 U.S. 645, 650, 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972). Considering the Louisiana procedure as a whole, we are convinced that the State has reached a constitutional

> accommodation of the respective interests of buyer and seller.

416 U.S. at 610, 40 L.Ed.2d at 415.

In *Mitchell* the Court found that the possible deterioration or destruction of the property in question, along with the very real risk of concealment or alienation of the property if the debtor is forewarned of the sequestration, to be significant interests of the creditor. These interests, the Court held, outweighed the impact on the debtor of the deprivation of his property, in view of the low risk of a wrongful sequestration under the procedures of the Louisiana statute. 416 U.S. at 610, 40 L.Ed.2d at 415. Reemphasizing the fact that a creditor need only establish the likelihood of success on the merits before seizure of the debtor's property, the Court identified the procedures which it found were in accord with principles of due process of law:

> [I]t seems apparent that the seller with his own interest in the disputed merchandise would need to establish in any event only the probability that his case will succeed to warrant the bonded sequestration of the property pending outcome of the suit. Cf. *Bell* v. *Burson,* 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971); *Ewing* v. *Mytinger & Casselberry,* 339 U.S. 594, 94 L. Ed. 1088, 70 S. Ct. 870 (1950). The issue at this stage of the proceeding concerns possession pending trial and turns on the existence of the debt, the lien, and the delinquency. These are ordinarily uncomplicated matters that lend themselves to documentary proof; and we think it comports with due process to permit the initial seizure on sworn ex parte documents, followed by the early opportunity to put the creditor to his proof. The nature of the issues at stake minimizes the risk that the writ will be wrongfully issued by a judge. The potential damages award available, if there is a successful motion to dissolve the

> writ, as well as the creditor's own interest in avoiding interrupting the transaction, also contributes to minimizing this risk.

416 U.S. at 609-10, 40 L.Ed.2d at 414-15.

In balancing the interests, risks, and statutory safeguards under the Illinois Attachment Act, it seems clear that the scale tips toward the validity of the Act. The creditor must establish the existence of the debt, as well as the need for prompt action, by filing an affidavit setting forth both the nature and amount of his claim, allowing for credits and set-offs, and one of nine narrow and specific circumstances in which an attachment may be had (§§1, 2) (A. 28-29). The affidavit must allege facts unequivocally, and not merely on information and belief. *Brandenburg* v. *Chicago Knitting Co.*, 102 Ill. App. 302 (1902). The specificity necessary for the affidavit to be valid is indicated in the case of *Fisher* v. *Secrist*, 48 F. 264 (1891). In that case the creditor stated in his affidavit that the debtor owed him $24,000 upon covenants in a deed attached to the affidavit. The court held the affidavit insufficient because it failed to recite the facts relied upon as breaches of the covenants, and the damages sustained by each breach.

In the present case appellants specifically set forth the State's claim against the appellees, the amount of that claim, and the grounds for attachment in their attachment complaint, which was incorporated into the affidavit by reference (A. 14-20). The facts alleged in that complaint are clearly as specific as were the facts alleged by the creditor in *Mitchell*, 416 U.S. at 602, 40 L.Ed.2d at 410.

The Illinois Act is narrowly drawn, allowing attachment only in special "situation[s] requiring special protection to . . . creditor interests," *Sniadach* v. *Family Finance Corp.*,

395 U.S. 337, 339, 23 L.Ed.2d 349, 352, 89 S.Ct. 1820 (1969), and where prompt and summary action is required. *Fuentes* v. *Shevin*, 407 U.S. 67, 93, 32 L.Ed.2d 556, 577, 93 S.Ct. 1983 (1972); *Hutchinson* v. *Bank of North Carolina*, 392 F.Supp. 888, 895 (M.D. N.C. 1975). Under the Illinois Act, attachment may be had only in nine narrow circumstances (§1) (A. 28-29), all of which give the creditor grave concern for his ability to collect from the debtor, absent summary procedures. The first five grounds for attachment, which the district court's opinion does not directly reach,[4] concern situations where the debtor is absent from the State, cannot be served with process, or is about to remove himself and/or his property from the State. The other four grounds, with which the district court specifically dealt, concern situations where the debtor has or is about to fraudulently conceal or dispose of his property or has fraudulently contracted for the debt sued upon so as to hinder or delay his creditors. In such cases there can be little doubt that summary action is necessary. If the debtor were to be forewarned of the creditor's suit, the creditor's claim would quite likely become worthless.

In actions sounding in tort under the Illinois Act, the creditor must be examined by a judge concerning his cause of action before a writ of attachment may issue (§2) (A.

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4 The court's injunction refers only to attachment proceedings under section one, parts sixth through ninth. The court, however, declared §§1, 2, 2a, 6, 8, 10, and 14 of the Act unconstitutional, thus foreclosing attachments on any of the grounds set forth in section one.

29-30).[5] In contract actions, the matters involved are ordinarily substantiated by documentary proof and a sworn affidavit should thus be sufficient. *Mitchell,* 416 U.S. at 609, 40 L.Ed.2d at 415. In such cases an ex parte appearance before a judge would be a mere formality.

The debtor is also protected against all loss by the creditor's bond, except where a state agency is the creditor, as here (§§4a, 4b) (A. 31-32), and may recover damages and costs for wrongful attachment (§4a, 27) (A. 31-32, 44), which include attorney's fees. *Chase* v. *Bodge*, 194 Ill. App. 352 (1915). The debtor may also bring a tort action against the creditor for bringing the attachment without probable cause. In such cases the damages recoverable include all losses incurred as a result of the attachment, *Lawrence* v. *Hagerman,* 56 Ill. 68 (1870), *Baird* v. *Liepelt,* 62 Ill. App. 2d 154, 210 N.E.2d 1 (1965), and in cases of malice, exemplary damages. *Lawrence* v. *Hagerman,* 56 Ill. 68 (1870).

The debtor may recover possession of the property by filing a bond (§§14, 15) (A. 38). Destruction of the attached property is precluded because the sheriff retains custody of it (§14) (A. 38). This latter protection afforded a debtor was absent in *Mitchell* where the creditor took possession of the seized property. Thus, the deprivation of property in this case is far less serious, since destruction and waste

[5] The attachment action as filed in the state court in this case proceeded upon a contract theory (A. 18). Since the underlying claim is fraud, however, it seems apparent that appellee could have attempted an attack on the writ of attachment as being illegally issued, in that the claim sounds in tort, and thus, it was necessary for State to apply to a judge for the writ. Whether the State should have so proceeded in this case is a question peculiarly for state court to answer.

by the creditor are foreclosed. Possession by the sheriff ensures official supervision of the attachment proceeding, and thereby prevents the abuse of the attachment remedy.

Under the Illinois Act, the debtor is also given an early hearing within 60 days of the attachment, at which he may attack the attachment alone, or defend on the merits of the underlying claim (§§6, 25) (A. 33-34, 43).[6] Given the requirements of modern litigation, a hearing within 60 days must be considered timely. Furthermore, the debtor may well be able to advance the hearing date by filing a motion to quash or dismiss. Such advancements are discretionary with the court and should be granted for good and sufficient cause. *Page* v. *Dillon,* 61 Ill. App. 282 (1895). At any hearing on any of the issues involved, the burden is upon the creditor to prove strictly every fact that forms the basis of his attachment. *Apollo Metals, Inc.* v. *Standard Mirror Co.,* 87 Ill. App. 2d 383, 389, 231 N.E.2d 655, 659 (1967); *Jaycox* v. *Wing,* 66 Ill. 182 (1872). There are no presumptions in favor of an attachment plaintiff. *Weber Chimney Co.* v. *Johnson,* 205 Ill. App. 348 (1917).

While a creditor's lien is not involved in this case, as was in *Mitchell,* the Illinois Act is, as noted above, much more narrowly drawn, encompassing only nine circumstances, all of which give a creditor grave concern for his

[6] Appellees surveyed the attachment cases filed in Cook County, Illinois in 1974. Of the 97 cases initiated, they located 78 case files. The average period of time in these cases between the date on which the writ of attachment was served and the return date was 18.2 days, the longest period being 59 days. In the 13 cases in which the debtors appeared on the return day, the average period of time between the date the writ was served and the trial date was 39 days, the longest period being 70 days. In the present case, the period between service of the writ and the scheduled trial date was 42 days (A. 9-10).

ability to collect from the debtor. These nine circumstances are far more threatening than those that were involved in *Mitchell,* where the creditor had only to show that it was within the power of the debtor to conceal or waste the property in issue. Moreover, it cannot be said that a creditor's lien is at all necessary to the result in *Mitchell.* In *North Georgia Finishing, Inc.* v. *Di-Chem Inc.,* 419 U.S. 601, 42 L.Ed 2d 751, 95 S.Ct. 719 (1975), this Court, in reaffirming *Mitchell* and testing the facts of *North Georgia* against the requirements of *Mitchell,* did not specify the existence of a property interest in the creditor as a necessary requisite. 419 U.S. at 606-07, 42 L.Ed.2d at 757. *Hutchinson* v. *Bank of North Carolina,* 392 F.Supp. at 898. It should also be noted that the appellants do have an interest in the monies in appellees' credit union account, since the more than $3,700 in public aid which appellees collected and to which they were not entitled, undoubtedly enabled appellees to accumulate the money in that account.

In sum, the procedures provided for by the Illinois Attachment Act represent a constitutional accommodation between the interests of the parties. The impact on the debtor caused by the initial short period during which he is deprived of the use of the attached property is far outweighed by the serious risks to the creditor, absent attachment. The Act is narrowly drawn to encompass only those situations where there is a great likelihood that a creditor's claim against the debtor will become worthless if the debtor is forewarned of the attachment. The risk to the creditor also outweighs the possibility of mistaken attachment, which is held to a bare minimum by the safeguards built into the Illinois Act. The creditor must establish his claim against the debtor, as well as his entitlement to the attachment remedy, by specific facts sworn to in an affidavit. Where the claim sounds in tort, the creditor must appear before a

judge before a writ of attachment will issue. The sheriff retains possession of the attached property, thus foreclosing creditor abuse. The debtor is entitled to an early hearing on the attachment, and may also recover possession by filing a bond. The Act ensures that the losing party on the underlying claim is protected against all loss by requiring the creditor to post a bond. Without the attachment procedure, however, the risk of loss to the creditor would be very great in the context of the factual situations at which the Illinois Act is directed.

Finally, it should be emphasized that the Illinois Act, as applied in this case, must be viewed in light of the important governmental interest which has been served by the attachment. The Illinois Department of Public Aid brought the attachment suit against appellees as a part of its general effort to eliminate various forms of welfare fraud. Both state and federal law place the duty upon the Department to make such efforts. Ill. Rev. Stat. 1973, ch. 23, §11-21 (A. 26-27); 45 C.F.R. §235.110. In dealing with the type of welfare case at issue, there is a special need for prompt action because of the great likelihood that the recipient under investigation will take steps to hinder the inquiry by either removing the funds from their present location or leaving the jurisdiction. The State has a significant interest in the attached property, which cannot be sufficiently protected if a lapse of time were to ensue before seizure of the property. The State has exercised its statutory authority to investigate and correct fraudulent acts only after careful investigation, and is able to exercise this authority to attach property only where there is a very real danger of inability to collect the money to which it is entitled, absent attachment. This Court has consistently upheld summary procedures like those involved here where those procedures were employed to secure an im-

portant governmental interest. *Cafeteria and Restaurant Workers Union* v. *McElroy*, 367 U.S. 886, 6 L.Ed.2d 1230, 81 S.Ct. 1743 (1961); *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 94 L.Ed. 1088, 70 S.Ct. 870 (1949); *Fahey* v. *Mallonee*, 332 U.S. 245, 91 L.Ed. 2030, 67 S.Ct. 1552 (1946); *Phillips* v. *Commissioner*, 283 U.S. 589, 75 L.Ed. 1289, 51 S.Ct. 608 (1930); *Coffin Bros. & Co.* v. *Bennett*, 277 U.S. 29, 72 L.Ed. 768, 48 S.Ct. 422 (1927); *Ownbey* v. *Morgan*, 256 U.S. 94, 65 L.Ed. 837, 41 S.Ct. 433 (1920); *see Fuentes* v. *Shevin*, 407 U.S. at 90-92, 32 L.Ed.2d at 575-77.

CONCLUSION

For the foregoing reasons, appellants respectfully request that this Honorable Court vacate the judgment of the district court, because that court failed to defer to the Illinois state court for a resolution of the due process issue presented in a pending state attachment proceeding.

In the alternative, appellants request that the district court's judgment be reversed on the basis that the procedures prescribed by the Illinois Attachment Act comport with principles of due process.

Respectfully submitted,

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